

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES P. DE FAZIO
CPA Certificate No. 30861

Case No. AC-2007-23
OAH NO. N-2007030610

Respondent

ORDER DENYING RECONSIDERATION

On August 29, 2007, Administrative Law Judge Trevor Skarda, State of California Office of Administrative Hearings, heard this matter in Sacramento, California. Kent D. Harris, Deputy Attorney General, represented complainant Carol Sigmann, Executive Officer of the California Board of Accountancy. Respondent represented himself.

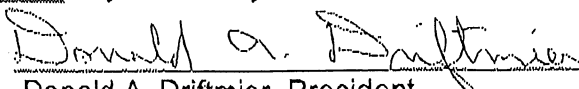
The matter was submitted on August 29, 2007. Administrative Law Judge Trevor Skarda issued his Proposed Decision on September 29, 2007. The California Board of Accountancy adopted the Proposed Decision and issued its Decision and Order on November 26, 2007, with an effective date of December 26, 2007.

On December 17, 2007, James P. De Fazio, filed a Petition for Reconsideration of the Decision and Order. On December 18, 2007, the California Board of Accountancy issued an Order of Stay of Execution of Decision until January 7, 2008, in order to permit the Board to decide whether to order reconsideration.

ORDER

The Board hereby issues this Order denying the Petition for Reconsideration, and the Decision and Order of the Board issued on November 26, 2007, is imposed, effective January 7, 2008.

IT IS SO ORDERED this 4 day of January 2008.


Donald A. Driftmier, President
For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JAMES P. DE FAZIO

CPA Certificate No. 30861

Respondent

Case No. AC-2007-23
OAH NO. N2007030610

ORDER OF STAY OF EXECUTION OF DECISION

Pursuant to Section 11521 of the Government Code, the Decision adopted by the California Board of Accountancy in the above-entitled matter is hereby stayed for ten (10) days until January 7, 2008 in order to permit the Board to decide whether to order reconsideration.

IT IS SO ORDERED this 18th day of December, 2007.



Carol Sigmann, Executive Officer

For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of:

JAMES P. DE FAZIO

Respondent.

File No. AC-2007-23

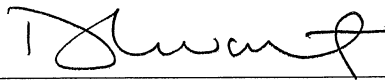
OAH No. N2007030610

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the BOARD OF ACCOUNTANCY as its Decision in the above-entitled matter.

This Decision shall become effective on December 26, 2007.

IT IS SO ORDERED November 26, 2007.



President

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES P. DEFAZIO

Certified Public Accountant No. CPA 30861

Respondent.

Case No. AC-2007-23

OAH No. N2007030610

PROPOSED DECISION

Administrative Law Judge Trevor Skarda, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, August 29, 2007

Deputy Attorney General Kent Harris represented complainant Carol Sigmann, Executive Officer, California Board of Accountancy, Department of Consumer Affairs (Board).

James P. DeFazio (respondent) was present and represented himself.

The matter was submitted on August 29, 2007.

FACTUAL FINDINGS

1. Complainant Carol Sigmann filed the accusation in her official capacity.
2. On December 5, 1980, the California Board of Accountancy issued Certified Public Accountant Number CPA 30861 to respondent James P. DeFazio. His license expired on July 31, 2007, unless it was renewed.
3. The United States Department of Treasury and the Internal Revenue Service (IRS) are governmental bodies or agencies within the meaning of Business and Professions Code section 5100, subdivision (h).

Suspension of Right to Practice

4. Respondent was suspended on June 12, 2001, by the Department of Treasury, IRS. The suspension prohibited respondent from "practice before the Internal Revenue Service" for a period of 18 months beginning on October 1, 2001. Respondent stipulated to the suspension in lieu of a disciplinary hearing.

5. Respondent was suspended for numerous violations of federal law. Respondent failed to file tax returns in a timely manner; failed to file "Form 1040" for one or more years, failed to pay tax liabilities in a timely manner (or at all) for one or more years; failed to file quarterly payroll tax returns for his sole proprietorship; failed to pay payroll taxes in a timely manner (or at all) for one or more years; and, he failed to pay "FUTA" in a timely manner or at all for one or more years.

6. Respondent's suspension from practice before the IRS was pursuant to Part 10 of Title 31, Code of Federal Regulations (sometimes known as "Treasury Circular 230").

7. Respondent's practice before the IRS constituted the practice of public accountancy within the meaning of Business and Professions Code section 5051.

Failure to Report Suspension

8. Respondent failed to report his suspension to the California Board of Accountancy within 30 days. Indeed, respondent failed to report his suspension at any time.

Respondent's Failure to Cooperate with the Board's Investigation

9. John E. O'Connor is an Investigative Certified Public Accountant employed by the Board. In early 2006, Mr. O'Connor received information that respondent had been suspended by the IRS in 2001, and that respondent had never reported the information to the Board. In a letter dated April 26, 2006, Mr. O'Connor requested information and records from respondent, including copies of IRS disciplinary documents related to respondent's suspension.

10. Respondent failed to provide all of the requested documents.

11. Respondent redacted information in some of the documents that he produced. For example, he produced a heavily-redacted letter he received from Mr. David Finz, Attorney-Advisor, IRS Office of Professional Responsibility, dated March 15, 2001. The letter lists respondent's alleged conduct which led to the suspension. Respondent redacted all information regarding the time periods in which he engaged in unlawful activity.

12. On June 1, 2006, Mr. O'Connor requested additional documents from respondent. Respondent failed to provide all of the requested information.

13. On September 29, 2006, the Board issued a records subpoena to respondent, requesting an unredacted copy of Mr. Finz' March 15, 2001 letter, along with "an IRS transcript for each year listed [in the letter], that indicates that your income tax returns have been filed, paid, or have an outstanding balance."

14. Respondent refused to comply with the subpoena.

Mitigation, Aggravation and Rehabilitation

15. Respondent provided no evidence of rehabilitation or mitigation. He refused to acknowledge any wrongdoing.

16. Respondent's California license has not been the subject of prior discipline and complainant has not shown evidence of other professional misconduct by respondent.

Costs

17. Complainant seeks reimbursement of its costs of investigation and prosecution of this matter. Complainant has certified \$3,396.10, in investigative costs and \$2,172.50, in Attorney General costs for a total of \$5,568.60. These costs are reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 5100, subdivision (h), provides that the board may revoke, suspend or refuse to renew any certificate granted if the holder has had his right to practice before any governmental body or agency suspended or revoked.

2. Respondent argued that his right to "practice" before the IRS was never suspended because he was permitted to, e.g., prepare tax returns and act as a witness before the IRS during his suspension. Neither activity is deemed to be "practice" before the IRS pursuant to Part 10 of Title 31, of the Code of Federal Regulations.

3. Respondent's argument is without merit. The fact that respondent was permitted to do things that the IRS does not deem to be "practice" is irrelevant; the IRS suspended respondent's right to practice for a period of 18 months.

4. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's certificate pursuant to Business and Professions Code section 5100, subdivision (h), by reason of the matters set forth in Fact Findings 4, 5, 6 and 7.

5. Business and Professions Code section 5100, subdivision (g), provides that the board may revoke, suspend or refuse to renew any certificate granted if the holder has "willfully violated this chapter or any rule or regulation promulgated by the board ..."

6. Business and Professions Code section 5063, subdivision (a)(3), requires a licensee to report to the Board within 30 days his or her "suspension of the right to practice" before another agency.

7. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's certificate pursuant to Business and Professions Code section 5100, subdivision (g), in conjunction with Business and Professions Code section 5063, subdivision (a)(3), by reason of the matters set forth in Factual Finding 8.

8. Business and Professions Code section 5063, subdivision (e), requires a licensee to "promptly respond to oral or written inquiries from the board concerning reportable events ..." California Code of Regulations, title 16, section 52, requires a licensee to provide accurate responses to Board subpoenas "and not to take any action to obstruct any Board inquiry, investigation or proceeding."

9. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's certificate pursuant to Business and Professions Code section 5100, subdivision (g), in conjunction with Business and Professions Code section 5063, subdivision (e), and California Code of Regulations, title 16, section 52, by reason of the matters set forth in Factual Findings 9, 10, 11, 12, 13 and 14.

10. Business and Professions Code section 5107, subdivision (a), provides that the holder of a certificate found to have violated the licensing law may be required to pay the reasonable costs of investigation and prosecution of the case. Section 5107, subdivision (e), provides that the amount of reasonable costs may be reduced or eliminated upon a finding that respondent cannot pay all or a portion of the costs or that payment would cause an unreasonable financial hardship that cannot be remedied through a payment plan.

Cause exists pursuant to Business and Professions Code section 5107, subdivision (a), to require respondent to pay \$5,568.60, the reasonable costs of investigation and prosecution. No evidence was presented that would warrant reduction of this amount. Pursuant to section 5107, subdivision (c), these costs are payable 120 days after the final decision in this case unless this time is extended by the board.

11. Respondent is not a good candidate for probation at this time because of his refusal to accept responsibility for his actions as well as his failure to cooperate with the Board during its investigation.

12. Taking into account the Board's duty to protect the public, the Board's disciplinary guidelines, respondent's conduct and the lack of evidence of rehabilitation or mitigation, nothing short of revocation of respondent's certificate will adequately protect the public at this time.

ORDER

1. Certified Public Accountant Number CPA 30861, issued to respondent James P. Defazio, is revoked.

2. Within 120 days of this order, respondent shall reimburse the board its costs of investigation and prosecution in this matter, in the amount of \$5,568.60.

DATED: September 28, 2007

A handwritten signature in black ink, appearing to read "Trevor Skarda", written over a horizontal line.

TREVOR SKARDA

Administrative Law Judge

Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
7
Attorneys for Complainant
8

9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-23

13 JAMES P. DeFAZIO
5150 Fair Oaks Blvd., #325
14 Carmichael, California 95608

A C C U S A T I O N

15 Certified Public Accountant license No. 30861

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy, Department of
22 Consumer Affairs.

23 2. On or about December 5, 1980, the California Board of Accountancy
24 issued Certified Public Accountant license Number 30861 to James P. DeFazio (Respondent).
25 The Certified Public Accountant license will expire on July 31, 2007, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 5063 of the Code states in pertinent part :

“(a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

...

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

...

(e) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.”

5. Section 5100 of the Code states in pertinent part:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

...

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter

(h) Suspension or revocation of the right to practice before any governmental body or agency.

1 6. Section 5107(a) of the Code states in pertinent part:

2 "The executive officer of the board may request the administrative law judge, as
3 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
4 certificate found to have committed a violation or violations of this chapter to pay to the board all
5 reasonable costs of investigation and prosecution of the case, including, but not limited to,
6 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

7 7. Title 16 of the California Code of Regulations, Section 52, states in
8 pertinent a part that:

9 “(d) A licensee shall provide true and accurate information and responses
10 to questions, subpoenas, interrogatories or other requests for information or documents and not
11 take any action to obstruct any Board inquiry, investigation, hearing or proceeding.”

12 FIRST CAUSE FOR DISCIPLINE

13 (Suspension or Revocation of Right to Practice Before Governmental Body)

14 7. Respondent is subject to disciplinary action under section 5100(h) in that
15 on or about October 1, 2001 his license to practice before the IRS was suspended for the period
16 between October 1, 2001 and March 31, 2003.

17 SECOND CAUSE FOR DISCIPLINE

18 (Failure To Report Suspension or Revocation of Right to Practice Before Governmental Body)

19 8. Respondent is subject to disciplinary action under section 5063(a)(3) in
20 that he did not report within thirty (30) days to the California Board of Accountancy that he was
21 suspended by the IRS during the period between October 1, 2001 to March 31, 2003.

22 THIRD CAUSE FOR DISCIPLINE

23 (Failure or Refusal to Comply with Board Subpoena)

24 9. Respondent is subject to disciplinary action under sections 5063(e),
25 5100(g), and Title 16, California Code of Regulations, Section 52(d), in that he failed or refused
26 to provide complete information and/or documents in response to a board subpoena seeking
27 information related to the suspension set forth in paragraph 7 above.

28

1 PRAYER

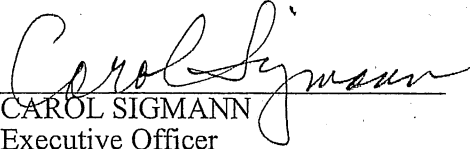
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

4 1. Revoking, suspending, or otherwise imposing discipline upon Certified
5 Public Accountant license Number 30861, issued to James P. DeFazio;

6 2. Ordering James P. DeFazio to pay the California Board of Accountancy
7 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 5107;

9 3. Taking such other and further action as deemed necessary and proper.

10
11
12 DATED: February 16, 2007

13
14 
15 CAROL SIGMANN
16 Executive Officer
17 California Board of Accountancy
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 03541110SA2006103433
22 DeFazio Accusation.wpd
23 kdh:2/15/07
24
25
26
27
28